

## REMARKS

Applicants respectfully request reconsideration of this application in light of the above amendments and the following remarks that are in response to the final office, mailed June 3, 2010.

### Claims Status

Claims 1-2 and 4-5 have been amended. Claims 3 and 6-18 have been cancelled, without prejudice. New claims 19-26 have been added. Therefore, claims 1-2, 4-5 and 19-26 remain pending for examination.

### 35 U.S.C. §103 Rejection

Claims 1-5, 7-11 and 13-17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bailey, et al., U.S. Patent No. 6,185,623 (“*Bailey*”) further in view of Marchand, U.S. Pub. No. 2008/0168157 (“*Marchand*”) further in view of Riedle, U.S. Patent 6,983,334 (“*Riedle*”). Applicant submits that the present claims are patentable over Bailey, Marchand and Riedle.

Claim 1, as amended, recites:

A method comprising:

initiating a downloading session, wherein initiating includes downloading a file to be transmitted as a plurality of packets of data by an active device and a plurality of passive devices;

when the active device has completed download of the packets of data, each of the plurality of passive devices check for a packet gap, wherein the packet gap occurs if the file size is known and a number of packets of the plurality of packets are lost, wherein a and total size of the number of lost packets is less than a pre-selected amount; and

promoting one or more of the plurality of passive devices to being one or smart devices if the packet gap is detected for the one or more passive devices.

(emphasis added)

*Bailey* discloses “[b]ooting diskless workstations by subnet broadcasting load programs to all network stations that join in subnet broadcast file group”. (*Bailey*, abstract). *Marchand* discloses “transferring and replicating data among geographically separated computing devices . . . [and] asynchronously maintain a set of replicated files throughout computer failures and introduction of new computes into the network” using splitting of multicast transfer and recover transfer (*Marchant*, abstract) and does not teach or reasonably suggest differing protocols or checking of packet gaps as recited by claim 1. (*see* claim 1). The Examiner acknowledges the deficiencies of *Bailey* and *Marchand*, but relies on *Riedle* for the alleged support. Applicants respectfully disagree.

Claim 1, as amended, recites in pertinent part “when the active device has completed download of the packets of data, each of the plurality of passive devices check for a packet gap, wherein the packet gap occurs if the file size is known and a number of packets of the plurality of packets are lost, wherein a and total size of the number of lost packets is less than a pre-selected amount . . . promoting one or more of the plurality of passive devices to being one or more smart devices if the packet gap is detected for the one or more passive devices.” (claim 1; emphasis added). Applicants respectfully submit that neither reference, individually or when combined in any combination, teaches or reasonably suggests the plurality of passive devices check for a packet gap and promoting one or more of the plurality of passive devices to being one or more smart devices if the packet gap is detected for the one or more passive devices as recited by claim 1. Accordingly, Applicants respectfully request the withdrawal of the rejection of claim 1 and its dependent claims.

Claims 6, 12 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bailey, et al., U.S. Patent No. 6,185,623 (“*Bailey*”) further in view of Marchand, U.S. Pub. No. 2008/0168157 (“*Marchand*”) and further in view of Riedle, U.S. Patent 6,983,334 (“*Riedle*”).

Claims 6, 12 and 18 have been cancelled. Therefore, Applicants contend that this rejection is moot.

### **New Claims**

New independent claims 19 and 23 contain limitations similar to those of claim 1. Accordingly, Applicants respectfully submit that claims 19 and 23 and their dependent claims are allowable over the cited references.

### **Conclusion**

In light of the foregoing, reconsideration and allowance of the claims is hereby earnestly requested.

### **Invitation for a Telephone Interview**

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

### **Request for an Extension of Time**

Applicants respectfully petition for a one month extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a). Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17(a) for such an extension.

### **Charge our Deposit Account**

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: October 1, 2010

/Aslam A. Jaffery/

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